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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

October Term, 1953

No. 659

HOWARD V. ~~CALVERLEY~~ Utley, Receiver,

Petitioner,

vs.

FAHEY, FEDERAL HOME LOAN BANK OF SAN FRANCISCO, *et al.*,

Respondents and Appellants Below.

W. I. GILBERT, JR., Attorney for Ernest R. Utley, Receiver,

Petitioner,

vs.

FAHEY, FEDERAL HOME LOAN BANK OF SAN FRANCISCO, *et al.*,

Respondents and Appellants Below.

Receiver's Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit With Brief in Support Thereof.

and

Motion for Certiorari Without Printing Additional Record.

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IN THE

Supreme Court of the United States

October Term, 1953

No. .....

Appeal No. 13411.

HOWARD V. CALVERLEY, Receiver,

Petitioner,

vs.

FAHEY, FEDERAL HOME LOAN BANK OF SAN FRANCISCO, *et al.,*

Respondents and Appellants Below.

Appeal No. 13558.

W. I. GILBERT, JR., Attorney for Ernest R. Utley, Receiver,

Petitioner,

vs.

FAHEY, FEDERAL HOME LOAN BANK OF SAN FRANCISCO, *et al.,*

Respondents and Appellants Below.

MOTION FOR CERTIORARI WITHOUT PRINTING ADDITIONAL RECORD.

To: The Honorable Justices of the United States Supreme Court.

Comes Now Ernest R. Utley, as receiver for Federal Home Loan Banks of Los Angeles, Portland, and/or San Francisco, and for this motion respectfully shows:

Petitioner is a receiver appointed by the United States District Court at Los Angeles, California, for the limited purpose of bringing actions and suing defendants designated by that Court.

Said actions were for the preservation of $6,300,000.00 of notes (with accrued interest of $700,000.00), secured by over $5,300,000.00 of United States Government bonds, $700,000.00 of accrued interest coupons, and approximately $1,000,000.00 in cash; making a combined total of over $14,000,000.00, all on deposit in the registry of said United States District Court. (App. pp. 126, 143, 156.)

Said securities have been so on deposit in said Court for more than six years, during which time various applicable statutes of limitations thereon threatened to expire (and have now expired). (App. pp. 126, 146, 156.)

Expiration of such statutes of limitation would have rendered said assets wholly (or partially) valueless and unenforceable. Upon the eve of such expiration the District Court ordered respondent Bank to file said actions and sue said defendants.

Respondents defied such order of Court and refused to file such actions.

The Court thereupon appointed petitioner receiver. Petitioner, pursuant to order of Court, has sued said defendants and brought said actions. Respondents, except said Bank, are the principal defendants so sued by petitioner, as ordered by the District Court. (App. pp. 135, 130, 144.)

Respondents appealed the order appointing petitioner as receiver to sue them, and when petitioner secured from

the District Court an allowance of costs to defend such appeal, respondents also appealed the order allowing costs. (App. p. 10.)

The Court of Appeals, upon motion of respondents, has, without printing of record on appeal, or briefs, summarily reversed both orders.

The Court of Appeals refused to hear or consider the merits and based its decision solely on an alleged lack of jurisdiction of the District Court to take any action; even to preserve $14,000,000.00 of assets in the registry of the Court from threatened total loss by expiration of statutes of limitations. (App. pp. 4 ff.)

The Court of Appeals has also ordered dismissal of the actions brought by petitioner receiver without consideration of the merits of such actions, and has required petitioner's counsel to return the entire allowance of costs for defending said appeal. (App. pp. 11-12.)

As a result petitioner is without funds to print a record for certiorari, and petitioner's counsel will be required to refund the costs of printing the within certiorari petition.

The record, unprinted in the Court of Appeals, is extremely voluminous, and the cost of printing the entire record would involve many thousands of dollars, and would contain considerable record not relevant to the issues presented.

Respondents have declined to stipulate to applications for certiorari being considered without printing the *entire* record, but have stated they will not oppose motions to the Court for such consideration.

The summary judgment of the Court of Appeals (based entirely upon holding the District Court lacked subject-matter jurisdiction) presents for review only questions of law, the portions of the record pertinent to which are printed in an appendix filed herewith for the convenience of this Honorable Court.

Wherefore, petitioner prays an order of this Honorable United States Supreme Court permitting consideration of the within petition for certiorari upon the record on appeal before the Court of Appeals, and upon the certified record of proceedings before said Court of Appeals.

March 24, 1954.

Respectfully submitted,

W. I. GILBERT, JR.,

Counsel for Petitioner Ernest R. Utley, Receiver, etc.

IN THE

Supreme Court of the United States

October Term, 1953

No. .....

HOWARD V. CALVERLEY, Receiver,

Petitioner,

vs.

FAHEY, FEDERAL HOME LOAN BANK OF SAN FRANCISCO, *et al.,*

Respondents and Appellants Below.

W. I. GILBERT, JR., Attorney for Ernest R. Utley, Receiver,

Petitioner,

vs.

FAHEY, FEDERAL HOME LOAN BANK OF SAN FRANCISCO, *et al.,*

Respondents and Appellants Below.

Receiver's Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Earl Warren, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Ernest R. Utley, as Receiver for Federal Home Loan Bank of Los Angeles, Portland and/or San Francisco,

prays that writs of certiorari issue to review the orders and judgment entered November 23, 1953, in Appeal Nos. 13,411 and 13,558, in the United States Court of Appeals for the Ninth Circuit, entitled:

Appeal No. 13,411.

FAHEY, *et al.*,

Appellants.

vs.

HOWARD V. CALVERLEY, Receiver,

Appellee.

FEDERAL HOME LOAN BANK OF SAN FRANCISCO,

Appellant,

vs.

HOWARD V. CALVERLEY, Receiver,

Appellee.

Appeal No. 13,558.

FAHEY, *et al.*,

Appellants,

vs.

W. I. GILBERT, JR., Attorney for Ernest R. Utley, Receiver,

Appellee.

FEDERAL HOME LOAN BANK OF SAN FRANCISCO,

Appellant,

vs.

W. I. GILBERT, JR., Attorney for Ernest R. Utley, Receiver,

Appellee.

Petitioner respectfully represents:

Statement of Matters Involved.

On March 15, 1952, an order was made in the United States District Court of Los Angeles in the consolidated actions Mallonee, *et al. v.* Fahey, *et al.* (No. 5421-P. H.), and Federal Home Loan Bank of Los Angeles, *et al.* v. Federal Home Loan Bank of Portland, *et al.* (No. 5678-P. H.), appointing your petitioner's predecessor receiver "for the limited purpose of preservation of property on deposit" in the District Court, "and of rights, claims and liabilities of the various parties thereto or thereon and for other purposes." (App.[1] pp. 116 ff.)

Defendants in the consolidated action filed an appeal from this order in the Court of Appeals, and that thereupon the District Court allowed the receiver fees to defend against the appeal. The defendants also promptly filed an appeal from the order allowing fees.

On November 23, 1953, before any record had been printed, and before the matter had been briefed, the Court of Appeals, on motion of the defendants in the consolidated action, made an order remanding the appeal from the appointment of your petitioner as receiver and from the order granting him costs. (App. pp. 11-12.) The opinion of the Court of Appeals incident to the order to remand is 208 Adv. Fed. 2d page 197, No. 2, and appears at pages 4 to 12 of the appendix filed herewith.

It is these orders which petitioner respectfully requests to have reviewed herein on certiorari.

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[1]This reference, as well as all others marked "App." is to the separate appendix filed for the benefit of all petitioners.

Statement.

$7,000,000.00 of Assets Endangered by Reversal of Appointment of Receiver and Dismissal of Actions Brought by Receiver.

The registry of the United States District Court at Los Angeles holds over $14,000,000.00 of assets beneficially owned by the stockholders in Federal Home Loan Banks (member Savings Associations), who are not parties to the litigation and are represented only by petitioner receiver. (App. pp. 129-130, 177.)

Such assets consist of four promissory notes with an unpaid principal balance of $6,300,000.00 and about $700,000.00 accrued interest. Over $7,000,000.00 of United States Government bonds, accrued interest coupons and cash are on deposit with the United States Court as security for said four promissory notes. (App. pp. 126, 143, 147, 166.)

The statutes of limitation have expired on said notes without any actions, except those brought by petitioner receiver, having been commenced before the expiration of such statutes of limitations.

Of the many parties liable on the debt evidenced by said four notes, none have been sued by the payee of said notes, respondent Federal Home Loan Bank of San Francisco, except only Long Beach Federal Savings and Loan Association. (App. pp. 146, 132.)

Said Association has denied all liability on said notes and caused the same to be impounded in the United States Court upon actions for cancellation of said notes as fraudulent, without consideration, and in violation of applicable statutes and regulations. (App. pp. 64, 164, 166.)

Said Association was not the maker of the notes. Respondent Ammann as conservator is the sole signor. (App. p. 128.) Respondent Federal Savings and Loan Insurance Corporation has collected premiums for, and insured and guaranteed repayment of, said $7,000,000.00 of denied obligations. (App. pp. 146, 172.)

Respondent Payee of Notes Is Trustee Which Refuses to Protect Trust Assets.

Respondent Federal Home Loan Bank of San Francisco, named payee of said four notes is a trustee. The beneficial owners of the $7,000,000.00 are the 300 Federal and State savings and loan Associations of the Eleventh Federal Home Loan Bank District. They in turn are trustees for the hundreds of thousands of mutual savings depositors who are the ultimate owners of the imperilled $7,000,000.00. (App. pp. 129-130, 169.)

If said $7,000,000.00 be lost, wholly or in part, through expiration of the statutes of limitation, such loss will render said San Francisco Bank insolvent,[1a] imperil the safety of said 300 member Associations, and will fall directly upon said hundreds of thousands of mutual savings depositors. (App. pp. 129-130, 143, 169.)

How Respondent Trustee Refuses to Protect Trust Assets.

The four notes for $6,300,000.00 were deposited in Court more than six years ago in actions brought by stockholders of the seized Federal Home Loan Bank of Los Angeles and the seized Long Beach Federal Savings and Loan Association who alleged in their respective

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[1a]The District Court so found (App. p. 132).

complaints that the seizures of their bank and association respectively, by respondents in March and May of 1946, were unconstitutional, arbitrary, capricious and malicious.[2] (14 F. R. D. 273, at 280, 282-283.)

In 1952, upon the eve of the expiration of the last of the California statutes of limitations, respondent San Francisco Bank sought leave of the District Court to amend its then four-year filed pleadings. By such amendment, respondent San Francisco Bank sought for the first time in any court to bring or commence actions to enforce, foreclose and protect the then four years past due notes upon which no interest had been paid for almost four years. (App. pp. 135, 143.)

United States District Court Orders Payee of Notes to Sue All Parties Liable Thereon, Including Maker and Insurer.

As a condition to granting permission to respondent San Francisco Bank to amend its four-year filed pleadings, the United States District Court at Los Angeles ordered said respondent Bank in its amended pleadings to sue among others, respondent Conservator Ammann, sole maker of said notes and respondent Federal Savings and Loan Insurance Corporation, insurer and guarantor of said notes and to bring causes of action for money had and received, statutory liability account stated, foreclosure of equitable mortgage and other similar forms of action. (App. p. 135.)

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[2]See *Fahey, et al. v. Mallonee, et al.*, 332 U. S. 245, page 247, for summarization of complaint by United States Supreme Court.

Respondent Payee Refuses to Sue Defendants or Bring Actions Ordered by Court.

Respondent San Francisco Bank, notwithstanding said Court order so to do, refused to sue the defendants or bring causes of action ordered by the Court.

Among the defendants so omitted by respondent Bank were Respondent Ammann as Conservator, and Respondent Federal Savings and Loan Insurance Corporation. (App. pp. 143-144, 146.)

Why Respondent Bank, a Trustee, Refused to Obey Order of United States District Court.

Why the San Francisco Bank refused to sue the parties, at least *prima facie* liable, can be explained by the District Court's findings in appointing petitioner receiver. (See App. pp. 126 ff.)

The Court found that all officers, attorneys and personnel of respondent San Francisco Bank received their salaries only on the approval of respondent Home Loan Bank Board.

That said Board are the sole trustees, *alter ego* and only governing authority of respondent Federal Savings and Loan Insurance Corporation.

That respondent Ammann continues to be an employee of said respondent Bank Board. (App. pp. 145, 171.)

The very suit filed by the San Francisco Bank omitting as defendants conservator Ammann, conservator Ammann's bonding company, Home Loan Bank Board, and Federal Savings and Loan Insurance Corporation, all respondents here, had to be approved by the omitted defendants Home Loan Bank Board before it could be filed by the San Francisco Bank.